



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ACRAN, Inc.
File: B-225654
Date: May 14, 1987

DIGEST

1. Although precise design specifications are not improper per se, their use is generally inappropriate if an agency can state its minimum needs in terms of performance specifications which alternate designs could meet. Protest by development contractor that a procurement for antisubmarine warfare power control systems essentially should have been restricted to its own design is denied where the intent of the contracting agency, as reasonably expressed in the solicitation, properly was to broaden the competition to allow for the submission of alternative approaches to meet its minimum equipment needs through the satisfaction of less restrictive performance requirements.
2. A protester's interest as a beneficiary of more restrictive specifications is not protectible under the General Accounting Office's bid protest function, which is to ensure that the statutory requirement for full and open competition has been met.
3. An initial proposal was properly included within the competitive range where the agency reasonably determined that the proposal was susceptible of being made acceptable through discussions.
4. Where a solicitation's evaluation and source selection criteria give greater weight to technical considerations than to cost or price, the selection of a lower cost/price offeror whose technical proposal has also been found to be technically superior is not only reasonable but required.

DECISION

ACRAN, Inc. protests the award of a contract to Exide Electronics Corporation under request for proposals (RFP) No. N00421-86-R-0169, issued by the Department of the Navy. The procurement is for the acquisition of a quantity of Anti submarine Warfare Operations Center Power Control Systems. (APCS). ACRAN objects to the award on the grounds

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that Exide's offer was technically nonconforming to the express requirements of the RFP, and that the Navy's selection decision was inconsistent with the evaluation and source selection scheme set forth in the solicitation.

We deny the protest.

BACKGROUND

The RFP was issued on July 10, 1986, contemplating the award of a firm-fixed-price contract. Technical and price proposals were requested, and the RFP advised offerors that technical capability to perform the work would be rated approximately one and one-half times as important as price as an evaluation factor. (Consistent with this information, the Navy utilized a 60/40 ratio between technical and price considerations in evaluating the offers.) The major technical criteria, listed in descending order of importance in the RFP, were: (1) Construction Approach; (2) Integrated Logistic Support; and (3) Corporate Factors.

The RFP further provided that although price was not as important as technical capability, "it is an important factor and should not be ignored." The importance of price would increase to the extent that competing proposals were found to be essentially equal technically. Offerors were advised that award would be made to the firm "whose proposal offers the greatest value to the Government in terms of technical and price rather than the proposal offering only the lowest price."

The RFP's Statement of Work (SOW) provided that the contractor was to produce APCS units "built in accordance with specification CC-ASWOC-011 (Rev. A) [as incorporated into the solicitation] and attached drawings." The SOW further provided that although the incorporated specification required that certain vendor-specific components be used in the APCS, "the contractor may, however, propose comparable or better components." The contractor's use of such alternative components would require written authority from the contracting officer to deviate from the specification.

On July 30, the Navy conducted a preproposal conference attended by representatives from ACRAN and Exide. On the same date, the Navy issued amendment 0001 to the RFP which set forth the questions and answers generated during the conference. Of significance to this case, a question was asked as to whether any requested deviation from the use of the specified components had to address each particular item or whether the deviation could be granted for a broader approach. The Navy responded:

"As long as you meet the requirements of the specification/SOW, your alternate approach is acceptable. However, any deviation must comply with SOW 3.4.1 reliability."

Amendment 0002 was issued on August 19, modifying the incorporated CC-ASWOC-011 (Rev. A) specification in two areas. The closing date for receipt of initial proposals took place as originally scheduled on August 28.

The Navy received technical and price proposals from ACRAN and Exide, and the proposals were then evaluated to determine the competitive range. ACRAN's technical proposal received an average raw score of 40.9 points out of a possible 60, and the proposal was deemed to be technically acceptable as submitted. The Navy did, however, have some concerns as to parts availability and staffing for the work. Exide's technical proposal received an average raw score of 35.36, reflecting the Navy's major concerns that the batteries proposed by Exide were noncompliant with the governing specification in terms of operational life; that the proposed APCS shelter was not well defined; and that certain aspects of the proposal relative to the Integrated Logistic Support technical criterion, such as spares and reliability, were not adequately addressed. The Navy determined that Exide's initial proposal was technically unacceptable as submitted, but susceptible to being made acceptable.

The Navy then "normalized" the raw technical scores by assigning 60 points to ACRAN's proposal (the full weighted value for the technical factors) since its raw score was the higher, and 51.9 points to Exide's proposal, representing the percentage difference by which Exide's raw technical score was lower than ACRAN's.

The Navy also analyzed and scored the price proposals submitted by the firms. Exide's price of \$3,010,173 was low; ACRAN's price was \$3,790,152. The Navy determined that both proposals were "consistent with the technical proposals." Some concern was voiced as to the disparity between the prices, the Navy's price analyst noting that it would be desirable to obtain a spare parts list from Exide to confirm the firm's proposed pricing for spares, but, overall, the analyst concluded that, "[F]or like services and material, Exide has given us the fairest price." Because Exide's price was lower than ACRAN's the firm's price proposal received a "normalized" price score of 40, the full number of weighted points available for price.

ACRAN's price proposal received a "normalized" score of 29.7, reflecting the percentage difference by which its price was higher than Exide's.

The Navy conducted written and oral discussions with the firms informing them that their proposals were within the competitive range, and issued a further amendment concerning the schedule of supplies and the delivery schedule. These discussions served to advise the firms of the various areas of deficiency perceived to exist in their proposals and sought responses to those concerns through the submission of best and final offers (BAFOs).

Upon evaluation of the BAFOs, the Navy determined that Exide's technical proposal should be significantly upgraded because the firm had appropriately addressed all the Navy's major concerns regarding the batteries proposed, APCS shelter, and spares and reliability considerations in its BAFO submission. Accordingly, the firm's raw technical score increased from 35.36 to 45.74. ACRAN's raw score increased only slightly from 40.90 to 41.64. This increase in Exide's raw score caused a concomitant readjustment in the "normalized" technical scores. Since Exide's raw score was now higher than ACRAN's, the firm's proposal received the full 60 weighted points for technical factors whereas ACRAN's proposal received 54.66 "normalized" technical points, reflecting the percentage differential between the firms' new raw scores.

In terms of final proposed price, ACRAN's price remained unchanged at \$3,790,152, while Exide increased its price slightly from \$3,010,173 to \$3,014,723. Therefore, although Exide still received the full 40 "normalized" points for its lower-priced proposal, ACRAN's "normalized" score increased from 29.7 to 29.8 as a result.

Accordingly, Exide's proposal had a total "normalized" score of 100.00, in contrast to ACRAN's score of 84.46. The Navy viewed this scoring as accurately reflecting Exide's technical superiority, and, therefore, since Exide's price was lower as well, the agency selected Exide for the award as the firm whose proposal, consistent with the RFP's established evaluation and source selection scheme, offered the "greatest value" to the government. ACRAN's protest to this Office follows an earlier agency-level protest against the award and its debriefing as the unsuccessful offeror.

PROTEST POSITION

ACRAN, through an apparent teaming arrangement with another firm, was the original development contractor of prototype APCS units under a previous sole-source Navy contract, and

furnished eight operational units to the Navy under a subsequent sole-source contract. That contract required the firm to furnish its technical drawings to the government to be used in the next procurement for the APCS, which was to be conducted on a competitive basis, and which is the procurement at issue here.

ACRAN's first major ground of protest is the assertion that the APCS unit offered by Exide is technically unacceptable because it represents an alternative design approach which does not conform to the product drawings developed by ACRAN forming an attachment to the subject RFP. In this regard, ACRAN references the SOW which, as indicated earlier, provided that the contractor was to produce APCS units in accordance with specification CC-ASWOC-011 (Rev. A) and the attached drawings. ACRAN contends that Exide's offered unit is materially noncompliant by using many components which differ from those expressly called for in the RFP.

Although the firm recognizes that the SOW allowed the substitution of "comparable or better" components by the contractor upon the contracting officer's approval, ACRAN urges that the SOW's reference to the "contractor," rather than to the "bidder" or "offeror," means that the allowed substitution of components can only occur during performance of the contract, and not upon the mere submission of proposals. Essentially, ACRAN contends that because no authorization could be given to Exide at the preaward stage to deviate from the component requirements, the Navy could not properly accept its nonconforming offer.

ACRAN's second major ground of protest is the assertion that the Navy's award decision was improper because it was inconsistent with the evaluation and source selection scheme set forth in the RFP. ACRAN contends that the Navy, in evaluating and scoring the proposals, failed to consider such factors as the higher reliability and delivery risks associated with Exide's offer, given that Exide is a new source for the APCS and its offered unit is a substantial redesign; the incompatibility of Exide's unit with the existing ACRAN-developed units; and Exide's lesser spare parts inventory. Accordingly, ACRAN urges that its offer in fact represented the "greatest value" under the solicitation's express award criteria because its higher proposed price was outweighed significantly by the fact that ACRAN was the developer of the APCS, and is the only firm to have successfully produced and supplied operational APCS units to the government.

ANALYSIS

At the outset, we question the timeliness of ACRAN's assertion that the Navy improperly accepted Exide's technically nonconforming offer of an alternative approach for meeting the APCS requirement. As noted earlier, the Navy had responded to a question asked at the preproposal conference concerning the allowable extent of deviations from the specified components by responding that an alternate approach would be acceptable if it conformed to the specification and met the reliability requirements called for in the SOW. It is obvious that the question in issue was asked by Exide, the only prospective offeror besides ACRAN at the conference. Therefore, ACRAN should have known at that point, and certainly no later than the issuance of amendment 0001 which incorporated the question and the agency's response, that Exide contemplated the offer of an alternate APCS approach and that the agency was prepared to accept it, all factors considered. If ACRAN believed that the acceptance of an alternative approach would be fundamentally inconsistent with the SOW's provision that all APCS units were to be built in accordance with specification CC-ASWOC-011 (Rev. A) and the attached drawings, the firm was obligated to protest the matter as creating a material ambiguity in the RFP's requirements no later than the August 28 closing date for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1) (1986); Weinschel Engineering Co., Inc., 64 Comp. Gen. 524 (1985), 85-1 CPD ¶ 574.

In any event, timeliness considerations aside, we find no merit in ACRAN's position that the RFP precluded the submission of alternative technical approaches. It is undisputed that ACRAN's proposed APCS unit conformed exactly to what was called for in the attached drawings, and was apparently identical to the operational units that had been furnished earlier. It is also undisputed that Exide's proposed APCS, which the firm had yet to build, was essentially a redesign differing substantially in specification from the ACRAN-developed unit represented in the RFP drawings. However, it is clear from the record that Exide's submission of an alternate approach was permissible since the solicitation reasonably reflected the agency's original intent to broaden the field of competition for this procurement.

Prior to the issuance of the RFP, the contracting officer prepared a memorandum concerning the need to use a "best buy" [or "greatest value"] analysis in selecting the successful offeror for award. Among other considerations, the contracting officer noted that the technical drawings, which comprised an integral part of the solicitation,

although necessary for competitive purposes, nevertheless reflected ACRAN's own particular technical approach. Therefore, the contracting officer concluded that:

"In order to prevent an unfair competitive advantage on the part of the development contractor [ACRAN] for this production contract, it is necessary to allow competitors to propose different technical approaches, i.e., specification deviations [W]e must evaluate the individual contractor proposed technical deviations and alternate approaches."

A reasonable reading of the RFP itself demonstrates that the Navy's intent to allow different approaches was in fact expressed in the solicitation. For example, under section M, "EVALUATION FACTORS FOR AWARD," the most important technical criterion--Construction Approach--was set forth as constituting in part the following subelements:

"a. Construction and integration approach appropriate to meet performance requirements.

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c. Use of standard equipment or suitability of proposed substitute equipment. Technical approach to integrate any proposed alternate equipment." (Emphasis supplied.)

Hence, despite ACRAN's attempt to rely on the SOW's provision that the APCS units were to be built in accordance with specification CC-ASWOC-011 (Rev. A) and the drawings in support of its position that alternate approaches were not acceptable, we believe the record as a whole supports a contrary conclusion.

In our view, the Navy properly drafted a solicitation which would be governed by performance, rather than by design, requirements. (We note that the Navy's technical evaluators, in their narrative statements concerning the proposals, expressly referred to the RFP's "performance requirements.") It has been our consistent holding that precise design specifications, although not improper per se, are generally inappropriate if an agency can state its minimum needs in terms of performance specifications which

alternate designs could meet. Morse Boulger, Inc., B-224305, Dec. 24, 1986, 66 Comp. Gen. _____, 86-2 CPD ¶ 715; Viereck Co., B-209215, Mar. 22, 1983, 83-1 CPD ¶ 287.

In this regard as well, the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(a)(1)(A)(iii) (Supp. III 1985), provides that agencies should develop specifications in such a manner that will obtain full and open competition consistent with the nature of the supplies or services being acquired. Hence, specifications may be stated in terms of performance requirements that establish the range of acceptable equipment characteristics. 10 U.S.C. § 2305 (a)(1)(C)(ii).

The record shows that the Navy contemplated that more than one particular APCS design could meet its minimum performance needs, see, e.g., A.B. Dick Co., B-207194.2, Nov. 29, 1982, 82-2 CPD ¶ 478, if the alternative approach was also consistent with critical supportability and reliability concerns. Therefore, ACRAN's complaint that Exide's approach should have been rejected as nonconforming is without foundation and, given that Exide was its only competitor, is tantamount to an assertion that the competition should have been restricted to the ACRAN design set forth in the RFP drawings. However, a protester's interest as a beneficiary of more restrictive specifications is not protectible under our bid protest function, which is to ensure that the statutory requirement for full and open competition has been met. APEC Technology Ltd., 65 Comp. Gen. 230 (1986), 86-1 CPD ¶ 81.

Finally, on this issue, we see no merit in ACRAN's assertion that Exide's offer could not permissibly propose the use of components different from those enumerated in the solicitation because the SOW provision allowing the substitution of "comparable or better" components only referred to the contractor's ability to do so upon government approval during contract performance. In our view, given the conclusion that the solicitation contemplated the satisfaction of performance and not design requirements, it is unreasonable to view this provision as requiring an offeror to propose an APCS utilizing only those vendor-specific components listed in the RFP, while at the same time allowing the firm, if awarded the contract, to then substitute components upon approval during performance. Reading the solicitation as a whole and in a manner giving effect to all its provisions, see, e.g., Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234, the only reasonable interpretation to be given the SOW provision in question is that an offeror such as Exide could propose different components as long as the firm could demonstrate

that the components met or would meet the "comparable or better" test.

We also reject ACRAN's argument that the selection of Exide was inconsistent with the RFP's established evaluation and source selection scheme. We believe that ACRAN simply misunderstands the nature of a procurement such as this conducted on the basis of competitive proposals.

ACRAN urges that Exide's initial proposal should have been rejected once the Navy determined that the proposal was technically unacceptable as submitted. However, the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.609(a) (1986), provides that a contracting officer conducting a negotiated procurement (competitive proposals) shall determine which initial proposals submitted are within the competitive range for the purpose of conducting discussions. The competitive range is to be determined on the basis of cost or price and other factors stated in the solicitation, and is to include all proposals that have a reasonable chance of being selected for award. We have consistently held that proposals having a reasonable chance of award are not only -- those initial proposals which are acceptable as submitted, but also those deficient proposals which are reasonably susceptible of being made acceptable through discussions. See Space Communications Co., B-223326.2 et al., Oct. 2, 1986, 66 Comp. Gen. _____, 86-2 CPD ¶ 377; Fairchild Weston Systems, Inc., B-218470, July 11, 1985, 85-2 CPD ¶ 39. Generally, then, only those proposals which are not capable of being improved to an acceptable status without substantive major revisions are not for inclusion in the competitive range. See Price Waterhouse, B-222562, Aug. 18, 1986, 86-2 CPD ¶ 190; Ameriko Maintenance Co., Inc., B-216406, Mar. 1, 1985, 85-1 CPD 255.

Here, the record establishes that the Navy favorably regarded Exide's proposed alternative APCS approach because it utilized fewer components than the ACRAN design and appeared to be more "state-of-the-art." See APEC Technology Ltd., supra, 65 Comp. Gen. 230 at 234, 86-1 CPD ¶ 81 at 6. Nevertheless, the Navy also regarded the proposal as not for acceptance in its original form because of the deficiencies perceived to exist in the critical areas noted. Since the FAR, 48 C.F.R. § 15.609(a) specifically provides that when there is doubt as to whether a proposal is in the competitive range, it should be included, we see nothing improper in the Navy's determination that Exide's proposal, although unacceptable as submitted, would have a reasonable chance for selection if the agency's concerns were addressed through competitive range discussions.

As a general rule, written or oral discussions are required to be held with all offerors under a negotiated procurement who submit proposals in the competitive range. FAR, 48 C.F.R. § 15.610(b). The fundamental purpose of this requirement is that offerors may be advised of deficiencies in their proposals and afforded the opportunity to satisfy the government's requirements through the submission of revised proposals. FAR, 48 C.F.R. §§ 15.610(c)(2) and (5); Furuno U.S.A., Inc., B-221814, Apr. 24, 1986, 86-1 CPD ¶ 400. The Navy satisfied the requirement for meaningful discussions here by pointing out to ACRAN, as well as Exide, the various areas of the firms' proposals which required amplification and by requesting BAFOs on that basis. Technical Services Corp., B-216408.2, June 5, 1985, 85-1 CPD ¶ 640.

ACRAN urges that its proposal should have been more highly rated because of the firm's position as the original development contractor of the APCS, and as the only vendor to furnish successful operational units to the Navy. However, it is well-settled that this Office will not substitute its judgment for that of the agency by making an independent technical evaluation unless the agency's action is shown to be arbitrary or in violation of procurement statutes or regulations. APEC Technology Ltd., *supra*, 65 Comp. Gen. 230 at 234, 86-1 CPD ¶ 81 at 6. The protester clearly bears the burden to show that the agency's technical evaluation was unreasonable. *Id.* Hence, we will not determine for ourselves what numerical scores should have been assigned to the various proposals during the evaluation process, Blurton, Banks & Assocs., Inc., B-206429, Sept. 20, 1982, 82-2 CPD ¶ 238, and our review is necessarily limited to ascertaining whether the evaluation and source selection process was both rational and consistent with the criteria set forth in the solicitation. System Development Corp., B-219400, Sept. 30, 1985, 85-2 CPD ¶ 356.

ACRAN clearly has not met its burden here to show that the selection of Exide was not rationally based or otherwise not in accord with the RFP criteria. Rather, we view the firm's assertion that the Navy did not give its proposal due credit during the evaluation as an extension of its argument that Exide's alternative approach was nonconforming to the requirements of the solicitation and, consequently, could not have been rated more favorably than ACRAN's proposal. However, based on our review of the record, ACRAN has failed to demonstrate that the Navy misevaluated Exide's proposal by improperly determining that the firm's responses in its BAFO submission to the agency's concerns rendered its proposal acceptable and, as reflected in the adjusted technical scoring, now superior to ACRAN's. The fact that ACRAN objects to the technical evaluation conducted here,

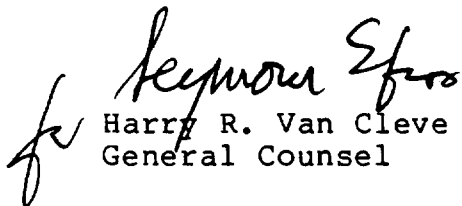
and believes its own proposal better than as evaluated by the Navy, does not render that evaluation unreasonable.

Experimental Pathology Laboratories, 65 Comp. Gen. 386 (1986), 86-1 CPD ¶ 235; Honeywell, Inc., B-181170, Aug. 8, 1974, 74-2 CPD ¶ 87.

ACRAN's assertion that the Navy's technical evaluators were not competent to evaluate the proposals because of their lack of knowledge of the APCS is self-serving speculation which we will not consider. The composition of technical evaluation teams is within the contracting agency's discretion, and, as such, does not give rise to review by this Office absent a showing of possible bad faith, fraud, or conflict of interest. See Martin Marietta Data Systems et al., B-216310 et al., Aug. 26, 1985, 85-2 CPD ¶ 87.

In sum, the selection of Exide was consistent with the RFP's "greatest value" basis for award because the firm's technical proposal was reasonably evaluated as technically superior and was also lower in price. Where, as here, the evaluation criteria give greater weight to technical considerations than to cost or price, the selection of a lower cost/price offeror whose technical proposal has also been found to be technically superior is not only reasonable but required. Experimental Pathology Laboratories, supra, 65 Comp. Gen. 386 at 390, 86-1 CPD ¶ 235 at 6.

Accordingly, the protest is denied.


Harry R. Van Cleve
General Counsel